SUPREME COURT, U. S.

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No. 64

In the

Supreme Court of the United States

OCTOBER TERM, 1967

UNITED ARTISTS CORPORATION,

Appellant,

v.

CITY OF DALLAS,

Appellee.

On Appeal From the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas

REPLY BRIEF FOR APPELLANT UNITED ARTISTS CORPORATION

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REPLY BRIEF FOR APPELLANT UNITED ARTISTS CORPORATION

In response to the Brief of Appellee City of Dallas heretofore filed in this appeal proceeding, Appellant United Artists Corporation respectfully submits this Reply Brief, to show the following:

I:

The "Balancing Test" is inapplicable to the questions presented in this appeal.

Appellee City of Dallas urges the Court to employ the "balancing test" in this appeal and uphold the specific pro-

visions of the Dallas classification ordinance, even assuming that it contains constitutional defects.

The City of Dallas has misconstrued the "balancing test." Examination of the decisions of this Court[1] shows that the "balancing test" is inapplicable to the questions presented in this appeal.

(1) The "balancing test" has been employed only in cases involving enactments or regulations "not intended to control the content of speech but *incidentally* limiting its unfettered exercise." *Konigsberg v. State Bar*, 366 U.S. 36, 50 (1961) (emphasis added). In other words, the "balancing test" is applicable, if at all, only where the interference with free speech is *indirect* or *collateral*.

(2) Even though the "balancing test" may justify regulation in a given area which results in *indirect* or *collateral* restraints on free speech, that "test" may be used to justify the particular *means* employed in regulating. As this Court most recently observed in *United States v. Robel*, 36 U.S.L. Week 4060, 4063 (December 11, 1967):

> "* * * [W]hen legitimate legislative concerns are expressed in a statute which imposes a substantial burden on protected First Amendment activities, Congress must achieve its goal by means which have a 'less drastic' impact on the continued vitality of First Amendment freedoms. *Shelton v. Tucker*, [364 U.S. 479, 488

[1] In addition to the cases cited in the Brief of Appellee, see, e.g., *Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961); *Baggett v. Bullitt*, 377 U.S. 360 (1964); *Elfbrandt v. Russell*, 384 U.S. 11 (1966); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *Whitehill v. Elkins*, 36 U.S.L. Week 4006 (U.S. November 6, 1967); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *Shelton v. Tucker*, 364 U.S. 479 (1960); *United States v. Robel*, 36 U.S.L. Week 4060 (U.S. December 11, 1967).

(1960)] * * *. The Constitution and the basic position of First Amendment rights demand nothing less."

In short, the conflict between a particular exercise of legislative power and the First Amendment guarantee of free speech can be resolved only "by legislation drawn more narrowly to avoid the conflict." *United States v. Robel, supra,* at 4063n.20.

By its own terms, the Dallas classification ordinance is intended to impose *direct* controls on the content of speech. In addition, the City of Dallas has not employed the least onerous *means* to accomplish its end; the ordinance's substantive standards are hopelessly indefinite and its procedural provisions fail to guarantee judicial participation or accord due process to the distributor of a motion picture. United Artists therefore believes that the "balancing test" cannot be employed in considering the issues raised by this appeal.

II.

Ordinance No. 11284 does not contain the constitutionally necessary procedural safeguards.

Appellee City of Dallas argues that the ordinance provision requiring a notice of non-acceptance[2] is designed to avoid court proceedings in those instances in which an ex-

[2] Section 46A-7(a); R. 128. In its original Brief (pages 51-58), United Artists argues that Ordinance No. 11284 is separately and independently violative of this Court's decisions in *Freedman v. Maryland,* 380 U.S. 51 (1965), because there is no guarantee of judicial participation before exhibition of a film is restrained as "not suitable for young persons," and *Lamont v. Postmaster General,* 381 U.S. 301 (1965), because the ordinance conditions the City's institution of judicial proceedings upon the filing of a "notice of non-acceptance."

hibitor[3] may not wish to contest the restrictive classification of a motion picture. Such an assertion completely vitiates the effectiveness of this Court's decision in *Freedman v. Maryland*, 380 U.S. 51 (1965), which was designed precisely to correct the situation where the First Amendment rights of the distributor or the public-at-large are surrendered because an exhibitor is unwilling, for reasons of his own, to contest restrictions on the exhibition of a film.[4] Surely, *Freedman* could not possibly be construed to countenance a system which lends public enforcement to private classifications[5] or which delegates to an exhibitor protection of the distributor's right to have its films shown and the public's right to see those films free of impermissible restrictions.

Appellee City of Dallas' reliance on *Times Film Corp. v. Chicago*, 365 U.S. 43 (1961), is completely misplaced. As this Court noted in *Freedman v. Maryland*, *supra*, at 53-54, *Times Film* did not validate any of the specific features of the Chicago censorship ordinance but rather merely held

[3] The City of Dallas has made no attempt to answer United Artists' contention that Ordinance No. 11284 is void on its face for failure to accord due process to the distributor of a motion picture. (Brief for Appellant United Artists, pages 58-63.) Under the terms of the ordinance, the distributor is calculatedly excluded from participation in any proceedings thereunder.

[4] John Gilliland, now chairman of the Dallas Motion Picture Classification Board, recently remarked: "The theatre owners have become more cooperative. Many of them are now classifying movies on their own as not suitable for young people. It's making our job a lot easier." (*The Dallas Times Herald*, November 6, 1967, section A, page 19.)

[5] If the Board accepts a "not suitable" classification proposed by an exhibitor, which in all instances heretofore it has done, the ordinance does not permit anyone to file a notice of non-acceptance. Section 46A-7(a); R. 128.

that administrative prior restraint of motion pictures is not unconstitutional *per se*.[6]

III.

The standards for classification under Ordinance No. 11284 are not sufficiently narrow and definite.

Appellee City of Dallas has not responded to United Artists' contention that the standards contained in Ordinance No. 11284 are vague, indefinite and overbroad under prior decisions of this Court, nor has it even attempted to distinguish such standards from those held invalid by this Court in the cases reviewed at pages 33 through 39 of United Artists' original Brief. Instead, the City has confined its argument to the general proposition that "a different standard can be applied to the young person than that applied to the adult."

The City of Dallas relies in part on this Court's decisions in *Ginzburg v. United States*, 383 U.S. 463 (1966), and *Mishkin v. New York*, 383 U.S. 502 (1966). *Ginzburg* does not endorse a concept of "variable obscenity" based on a

[6] The validity of the specific features of an amended version of the Chicago ordinance is now being challenged in an appeal which has been docketed in this Court. *Teitel Film Corp. v. Cusack* (No. 787).

United Artists believes that if the Court reconsidered its holding in *Times Film*, it would hold that, even assuming motion pictures may be "different" from books, the abuses which inevitably accompany an *administrative* system of review are the same in the case of each. See *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963); *Holding v. Blankenship*, 387 U.S. 94 (1967); *Corinth Publications, Inc. v. Wesberry*, 388 U.S. 448 (1967). Indeed, the record in this case seriously undermines the Court's apparent assumption in *Freedman* that the imposition of certain procedural safeguards would prove sufficient to prevent those abuses. Cf. *Kingsley Books, Inc. v. Brown*, 354 U.S. 436 (1957).

material's appeal to different audiences. *Mishkin* may indicate this Court's approval of such a concept, but carefully limits its application to cases in which there has first been proof that the material in question "is designed for and primarily disseminated to" the group upon the basis of whose prurient interests the appeal of the material is to be judged. *Mishkin v. New York, supra,* at 508. There is no evidence in the record of this case to show that "VIVA MARIA" was designed for and primarily disseminated to "young persons," rather than the public-at-large; nor does the Dallas ordinance condition its application upon such preliminary proof. Appellee's reliance upon the *Ginzburg* and *Mishkin* cases is therefore misplaced. Indeed, the City has contended throughout this litigation, and one justice of the Court of Civil Appeals expressly held, that the ordinance is not aimed at obscenity, constant or variable.

Appellee also relies on this Court's decision in *Prince v. Massachusetts,* 321 U.S. 158 (1944), a case which arose under the "free exercise" clause of the First Amendment and involved a regulation of *conduct,* not speech.[7] This Court has long recognized that the state's permissible range of regulation over conduct, even though speech may be affected indirectly, is much broader than its constitutionally permissible range of regulation over speech as such. See,

[7] Appellant in *Prince* expressly disclaimed any reliance upon the First Amendment right of free speech. 321 U.S. at 164. In his opinion for a majority of the Court, Mr. Justice Rutledge held that "the power of the state to control the *conduct* of children reaches beyond the scope of its authority over adults * * *." *Id.* at 170 (emphasis added). In his dissenting opinion, Mr. Justice Murphy noted that "[n]o question of freedom of speech or freedom of press is present and we are not called upon to determine the permissible restraints on those rights." *Id.* at 172.

e.g., *Cox v. Louisiana*, 379 U.S. 536, 554-555 (1965). The Dallas ordinance, by contrast, involves a direct regulation of speech.

On page 18 of its Brief, the City notes that states have been permitted to pass laws imposing various disabilities upon children. But, as this Court has repeatedly said, states are not permitted such regulatory latitude where the constitutional right of free speech is involved. See, e.g., *Smith v. California*, 361 U.S. 147, 150-152 (1959).

Nor is any support for the City's position found in *Chemline, Inc. v. City of Grand Prairie*, 364 F. 2d 721 (5th Cir. 1966). Cases involving restrictions on the *places* where certain films may be shown, even though motivated in part by the *ages* of possible viewers, are clearly inapposite to the issues raised by this appeal. The ordinances involved in *Chemline*, for example, merely served to prevent involuntary but unavoidable exposure to films which might prove offensive.[8] See *Redrup v. New York*, 386 U.S. 767, 769 (1967) (exhibition "in a manner so obstrusive as to make it impossible for an unwilling individual to avoid exposure to it"); *Fort v. City of Miami*, 36 U.S.L. Week 3173 (October 23, 1967).

[8] Although the majority in *Chemline* purported to sustain the ordinances on the ground that they constituted a reasonable method by which children could be prevented from viewing the films in question, such a rationale might violate this Court's holding in *Butler v. Michigan*, 352 U.S. 380, 383 (1957), in that it "reduce[s] the adult population of [Grand Prairie] to [viewing on screens of the described type] only what is fit for children."

See also the concurring opinion of Judge Moore, in which highway safety considerations are stressed. *Chemline, Inc. v. City of Grand Prairie*, 364 F. 2d 721, 734 (5th Cir. 1966).

In addition, even assuming that standards governing the dissemination of material to minors may differ from those governing the dissemination of material to adults, such standards must still be narrow and definite. As noted above, the City has not answered United Artists' contention that the standards set forth in the Dallas ordinance are too vague, indefinite and overbroad to satisfy the constitutional requirements enunciated in previous decisions of this Court.[9]

IV.

The Dallas Classification Ordinance as applied imposed an unconstitutional restraint on exhibition of the motion picture "Viva Maria."

Classification of "VIVA MARIA" as "not suitable for young persons" is not at any point in the City's brief defended on the ground that the film is obscene or obscene when viewed by an audience of young persons. In addition, as the record in this case shows, "VIVA MARIA"[10] was classified for reasons either unarticulated or, if articulated, contradictory—different reasons have been cited by two members of the Board, by the City, by the trial judge, and by the two justices of the Court of Civil Appeals. (Brief for Appellant United Artists, pages 40-48.)

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[9] Although the Dallas Motion Picture Classification Board has 46 separate and distinct standards upon which to base a classification, there is some doubt as to whether the Board adheres even to those standards in making its decisions. Some members of the Board have stated that the only "standard" they use in determining whether a motion picture is "not suitable for young persons" is: "[W]ould I want my youngster to see this movie?" (*The Dallas Times Herald*, November 6, 1967, section A, page 19.)

[10] Because of a typographical error, the American premiere date for "VIVA MARIA" was listed in the Brief for Appellant United Artists (page 9) as December 18, 1963. This should be corrected to December 18, 1965.

The City argues that the fact the ordinance might have been applied improperly in this case has no bearing on the constitutionality of the ordinance as such. However, as this Court has repeatedly noted, that is not so where the "effect is to leave standing a statute [or ordinance] patently capable of many unconstitutional applications * * *." *Smith v. California*, 361 U.S. 147, 151 (1959). And, as the record in the instant appeal shows, Ordinance No. 11284, because of its procedural infirmities and vague standards, is capable of almost nothing else.

V.

There is no evidence establishing a causal connection between motion pictures and juvenile delinquency, as alleged by Appellee in its answers to the *amicus curiae* Briefs.

In an apparent attempt to augment its original Brief, Appellee has filed unprecedented answers to the *amicus curiae* Briefs filed by The Authors League of America, Inc., and the American Civil Liberties Union and its New York and Texas affiliates. United Artists wishes to comment on only one point in particular.

Appellee asserts that the City Council of the City of Dallas, "after much investigation and deliberation," has found that many motion pictures have a "detrimental effect" upon the behavior of young persons. However, no such supposed findings are anywhere set forth. In addition, the City's assertion that "most authorities" agree with the con-

clusion of its City Council is an unwarranted statement unsupported by any reference or citation.

Indeed, the most reputable evidence is either to the contrary or that no conclusive finding can be made. (See *amicus curiae* Brief of American Civil Liberties Union, pages 7-9.) Recognizing this fact, Congress has recently provided for the creation of a Commission on Obscenity and Pornography "to determine whether such materials are harmful to the public, *and particularly to minors* * * *" (Public Law 90-100; 90th Congress, S. 188.) In addition, United Artists understands that a motion has been made on behalf of Karen Horney Clinic, Inc., a nationally renowned psychiatric clinic whose program includes treatment of juveniles, to file an *amicus curiae* brief which challenges the validity of the premises upon which the Dallas classification ordinance is based and indeed suggests the mischief of such an approach to such a complex problem as juvenile delinquency.

Under such circumstances, United Artists believes that neither the City nor this Court can proceed upon an assumption that a "nexus" between motion pictures and juvenile delinquency exists. See *Gibson v. Florida Legislative Investigative Committee*, 372 U.S. 539, 1963; *DeGregory v. Attorney General of New Hampshire*, 383 U.S. 825, 1966.

In short, while the purpose underlying the ordinance may be noble, the City cannot achieve that purpose by suppression of free speech, either totally or partially. The purpose of this specific ordinance is unsupportable scientifically or otherwise, and cannot be rationalized on the basis of the

legislative right to be wrong. For, as this Court has repeatedly made clear, when freedom of expression is involved, even legislative prerogatives must yield.

CONCLUSION

On each and every of the foregoing grounds and on each and every of the grounds set forth in Appellant's original Brief on file herein, Appellant United Artists Corporation prays that the judgment of the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas be reversed.

Respectfully submitted,

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PROOF OF SERVICE

I, Paul Carrington, one of the attorneys for United Artists Corporation, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 10th day of January, 1968, I served copies of the foregoing Reply Brief for the Appellant United

Artists Corporation on the following parties by depositing the same in the United States mail box, with first class postage prepaid, addressed to counsel of record for Appellee City of Dallas and Appellant Interstate Circuit, Inc. at the following post office addresses, respectively:

1. To Appellee City of Dallas:

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SUPREME COURT OF THE UNITED STATES

Nos. 56 AND 64.—OCTOBER TERM, 1967.

	Interstate Circuit, Inc., Appellant,	
56	*v.*	On Appeals From the Court of Civil Appeals of Texas, Fifth Supreme Judicial District.
	City of Dallas.	
	United Artists Corporation, Appellant,	
64	*v.*	
	City of Dallas.	

[April 22, 1968.]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Appellants are an exhibitor and the distributor of a motion picture named "Viva Maria," which, pursuant to a city ordinance, the Motion Picture Classification Board of the respondent City of Dallas classified as "not suitable for young persons." A county court upheld the Board's determination and enjoined exhibition of the film without acceptance by appellants of the requirements imposed by the restricted classification. The Texas Court of Civil Appeals affirmed,[1] and we noted probable jurisdiction, 387 U. S. 903, to consider the First and Fourteenth Amendment issues raised by appellants with respect to respondent's classification ordinance.

That ordinance, adopted in 1965, may be summarized as follows.[2] It establishes a Motion Picture Classifica-

[1] 402 S. W. 2d 770 (1966). The Texas Supreme Court denied discretionary review and therefore the appeal is from the judgment of the Court of Civil Appeals. 28 U. S. C. § 1257 (2).

[2] The ordinance is set forth in an Appendix to this opinion. The parties disagree as to the meaning of certain of its provisions that have not been authoritatively interpreted by courts of the State. The differences are not material to our decision, however, and the

tion Board, composed of nine appointed members, all of whom serve without pay. The Board classifies films as "suitable for young persons" or as "not suitable for young persons," and defines young persons as children who have not reached their 16th birthday. An exhibitor must be specially licensed to show "not suitable" films.

The ordinance requires the exhibitor, before any initial showing of a film, to file with the Board a proposed classification of the film together with a summary of its plot and similar information. The proposed classification is approved if the Board affirmatively agrees with it, or takes no action upon it within five days of its filing.

If a majority of the Board is dissatisfied with the proposed classification, the exhibitor is required to project the film before at least five members of the Board at the earliest practicable time. At the showing, the exhibitor may also present testimony or other support for his proposed classification. Within two days the Board must issue its classification order. Should the exhibitor disagree, he must file within two days [3] a notice of nonacceptance. The Board is then required to go to court within three days to seek a temporary injunction, and a hearing is required to be set on that application within five days thereafter; if the exhibitor agrees to waive notice and requests a hearing on the merits of a permanent injunction, the Board is required to waive its application for a temporary injunction and join in the exhibitor's request. If an injunction does not issue within 10 days of the exhibitor's notice of nonacceptance, the

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summary of the ordinance in the text above should not be taken as acceptance by us of any of the parties' conflicting interpretations, nor as expressing any view on the validity of provisions of the ordinance not challenged here.

[3] The two-day period is apparently part of an attempt to assure prompt final determination. The ordinance also provides that "any initial or subsequent exhibitor" may seek reclassification of a film previously classified.

Board's classification order is suspended.[4] The ordinance does not define the scope of judicial review of the Board's determination, but the Court of Civil Appeals held that *de novo* review in the trial court was required.[5] If an injunction issues and the exhibitor seeks appellate review, or if an injunction is refused and the Board appeals, the Board must waive all statutory notices and times, and join a request of the exhibitor, to advance the case on the appellate court's docket, *i. e.*, do everything it can to assure a speedy determination.

The ordinance is enforced primarily by a misdemeanor penalty: an exhibitor is subject to a fine of up to $200 if he exhibits a film that is classified "not suitable for young persons" without advertisements clearly stating its classification or without the classification being clearly posted, exhibits on the same program a suitable and a not suitable film, knowingly admits a youth under age 16 to view the film without his guardian or spouse accompanying him,[6] makes any false or willfully misleading statement in submitting a film for classification, or exhibits a not suitable film without having a valid license therefor.

The same penalty is applicable to a youth who obtains admission to a not suitable film by falsely giving his age as over 16 years, and to any person who sells or gives

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[4] Appellants assert that, despite the seemingly clear words of the suspension provision, exhibitors in practice have not been free to show films without a not suitable notification while a court challenge is pending, even though an injunction has not issued within the 10-day period. See n. 2, *supra*.

[5] 402 S. W. 2d 770, 774–775.

[6] Respondent says that youths under 16 years of age accompanied throughout the showing of the picture by a guardian (parent) or spouse, may attend not suitable films. Appellants read the ordinance as making the existence of such accompaniment solely a matter of defense should a criminal prosecution ensue. See n. 2, *supra*.

to a youth under 16 a ticket to a not suitable film, or makes any false statements to enable such a youth to gain admission.[7]

Other means of enforcement, as against the exhibitor, are provided. Repeated violations of the ordinance, or persistent failure "to use reasonable diligence to determine whether those seeking admittance to the exhibition of a film classified 'not suitable for young persons' are below the age of sixteen," may be the basis for revocation of a license to show not suitable films.[8] Such a persistent failure, or exhibition of a not suitable film by an exhibitor with three convictions under the ordinance, *inter alia*, are defined as "public nuisances," which the Board may seek to restrain by a suit for injunctive relief.

The substantive standards governing classification are as follows:

> " 'Not suitable for young persons' " means:
> "(1) Describing or portraying brutality, criminal violence or depravity in such a manner as to be, in the judgment of the Board, likely to incite or encourage crime or delinquency on the part of young persons; or
> "(2) Describing or portraying nudity beyond the customary limits of candor in the community, or sexual promiscuity or extra-marital or abnormal sexual relations in such a manner as to be, in the

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[7] See n. 6, *supra*. It appears that a parent who purchases a ticket to a not suitable film and gives it to his child is subject to the misdemeanor penalty of the ordinance. To be sure, respondent indicated at oral argument that criminal sanctions have not been sought against anyone under the ordinance.

[8] In related litigation, the provision for revocation of the special license was held unconstitutional as violative of *Butler* v. *Michigan*, 352 U. S. 380 (1957), by District Judge Hughes, 249 F. Supp. 19, 25 (D. C. N. D. Tex., 1965), and that ruling was not challenged on appeal. See *Interstate Circuit, Inc.* v. *City of Dallas*, 366 F. 2d 590, 593, n. 5 (C. A. 5th Cir., 1966).

judgment of the Board, likely to incite or encourage delinquency or sexual promiscuity on the part of young persons or to appeal to their prurient interest.

"A film shall be considered 'likely to incite or encourage' crime delinquency or sexual promiscuity on the part of young persons, if, in the judgment of the Board, there is a substantial probability that it will create the impression on young persons that such conduct is profitable, desirable, acceptable, respectable, praiseworthy or commonly accepted. A film shall be considered as appealing to 'prurient interest' of young persons if in the judgment of the Board, its calculated or dominant effect on young persons is substantially to arouse sexual desire. In determining whether a film is 'not suitable for young persons,' the Board shall consider the film as a whole, rather than isolated portions, and shall determine whether its harmful effects outweigh artistic or educational values such film may have for young persons."

Appellants attack those standards as unconstitutionally vague. We agree. Motion pictures are, of course, protected by the First Amendment, *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495 (1952), and thus we start with the premise that "[p]recision of regulation must be the touchstone," *NAACP* v. *Button*, 371 U. S. 415, 438 (1963). And while it is true that this Court refused to strike down, against a broad and generalized attack, a prior restraint requirement that motion pictures be submitted to censors in advance of exhibition, *Times Film Corp.* v. *City of Chicago*, 365 U. S. 43 (1961), there has been no retreat in this area from rigorous insistence upon procedural safeguards and judicial superintendence of the censor's action. See *Freedman* v. *Maryland*, 380 U. S. 51 (1965).[9]

[9] See also *Teitel Film Corp. v. Cusack*, 390 U. S. 139 (1968).

In *Winters* v. *New York*, 333 U. S. 507 (1948), this Court struck down as vague and indefinite a statutory standard interpreted by the state court to be "criminal news or stories of deeds of bloodshed or lust, so massed as to become vehicles for inciting violent and depraved crimes . . . ." *Id.*, at 518. In *Joseph Burstyn, Inc.* v. *Wilson, supra*, the Court dealt with a film licensing standard of "sacrilegious," which was found to have such an all-inclusive definition as to result in "substantially unbridled censorship." 343 U. S., at 502. Following *Burstyn*, the Court held the following film licensing standards to be unconstitutionally vague: "of such character as to be prejudicial to the best interests of the people of said city," *Gelling* v. *Texas*, 343 U. S. 960 (1952); "moral, educational or amusing and harmless," *Superior Films, Inc.* v. *Department of Education*, 346 U. S. 587 (1954); "immoral," and "tend to corrupt morals," *Commercial Pictures Corp.* v. *Regents*, 346 U. S. 587 (1954); "approve such films . . . which are moral and proper; . . . disapprove such as are cruel, obscene, indecent, or immoral, or such as tend to debase or corrupt morals," *Holmby Productions, Inc.* v. *Vaughn*, 350 U. S. 870 (1955).[10] See also *Kingsley Int'l Pictures Corp.* v.

[10] There are numerous state cases to the same effect. See, *e. g.*, *Police Commissioner* v. *Siegel Enterprises, Inc.*, 223 Md. 110, 162 A. 2d 727, cert. denied, 364 U. S. 909 (1960) ("violent bloodshed, lust or immorality or which, for a child below the age of eighteen are obscene, lewd, lascivious, filthy, indecent or disgusting and so presented as reasonably to tend to incite such a child to violence or depraved or immoral acts"); *People* v. *Kahan*, 15 N. Y. 2d 311, 206 N. E. 2d 333 (1965); *People* v. *Bookcase, Inc.*, 14 N. Y. 2d 409, 201 N. E. 2d 14 (1964) ("descriptions of illicit sex or sexual immorality"); *Hallmark Productions, Inc.* v. *Carroll*, 384 Pa. 348, 121 A. 2d 584 (1956) ("sacrilegious, obscene, indecent, or immoral, or such as tend . . . to debase as corrupt morals"). In *Paramount Film Distributing Corp.* v. *City of Chicago*, 172 F. Supp. 69 (D. C. N. D. Ill., 1959), it was alternatively held that the standard "tends

Regents, 360 U. S. 684, 699–702 (Clark, J., concurring in result).

The vice of vagueness is particularly pronounced where expression is sought to be subjected to licensing. It may be unlikely that what Dallas does in respect to the licensing of motion pictures would have a significant effect upon film makers in Hollywood or Europe. But what Dallas may constitutionally do, so may other cities and States. Indeed, we are told that this ordinance is being used as a model for legislation in other localities. Thus, one who wishes to convey his ideas through that medium, which of course includes one who is interested not so much in expression as in making money, must consider whether what he proposes to film, and how he proposes to film it, is within the terms of classification schemes such as this. If he is unable to determine what the ordinance means, he runs the risk of being foreclosed, in practical effect, from a significant portion of the movie-going public. Rather than running that risk, he might choose nothing but the innocuous, perhaps save for the so-called "adult" picture. Moreover, a local exhibitor who cannot afford to risk losing the youthful audience when a film may be of marginal interest to adults—perhaps a "Viva Maria"—may contract to show only the totally inane. The vast wasteland that some have described in reference to another medium might be a verdant paradise in comparison. The First Amendment interests here are, therefore, broader than merely those of the film maker, distributor, and exhibitor, and certainly broader than those of youths under 16.

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toward creating a harmful impression on the minds of children" was indefinite; that provision had no further legislative or judicial definition and is therefore unlike the statute in *Ginsberg* v. *New York, ante,* 390 U. S., at ——, where the phrase "harmful to minors" is specifically and narrowly defined in accordance with tests this Court has set forth for judging obscenity.